

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND KNAPP,
Plaintiff,

v.

SAGE PAYMENT SOLUTIONS, INC., et
al.,
Defendants.

Case No. [17-cv-03591-MMC](#)

**ORDER DENYING AS MOOT
DEFENDANT'S MOTION TO DISMISS;
VACATING HEARING**

Before the Court is defendant Sage Payment Solutions, Inc.'s "Motion to Dismiss the Complaint or, in the Alternative, to Strike Class Allegations and to Stay Discovery," filed September 8, 2017, pursuant to Rules 12(b) and 12(f) of the Federal Rules of Civil Procedure. On September 22, 2017, plaintiff Raymond Knapp filed a First Amended Complaint ("FAC").


A party may amend a pleading "once as a matter of course within . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." See Fed. R. Civ. P. 15(a)(1). "[A]n amended pleading supersedes the original, the latter being treated thereafter as non-existent." Bullen v. De Bretteville, 239 F.2d 824, 833 (9th Cir. 1956), cert. denied, 353 U.S. 947 (1957).

In the instant case, plaintiff filed his FAC within 21 days after service of defendant's motion to dismiss, and, consequently, was entitled to amend as of right. See Fed. R. Civ. P. 15(a)(1).

Accordingly, the Court hereby DENIES as moot defendants' motion to dismiss the initial complaint and vacates the hearing set for October 27, 2017.

IT IS SO ORDERED.

Dated: September 22, 2017


MAXINE M. CHESNEY
United States District Judge